bed depend on the fact of navigability. *Goodwin* v. *Thompson*, 15 Lea (Tenn.) 209. In the absence of treaty or agreement the exact boundary between states is held, by the weight of authority, to be the "thread" of the stream, or the middle of the main navigable channel, on the principle that the right of each state to equality in the control of navigation demands an equality of ownership in that channel. *Iowa* v. *Illinois*, 147 U. S. 1. Arkansas, however, has held the boundary to be the line midway between the banks of the river. *Cessill* v. *State*, 40 Ark. 501. The decision of the present case on this point may be considered as an agreement by Tennessee to that line. On the other point the law is well settled in accord with the case, that an avulsion will leave the boundary as before, in the old bed. *Nebraska* v. *Iowa*, 143 U. S. 359.

BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

THE PRESENT INADEQUACY OF INTERSTATE RENDITION. — The late kidnapping of Haywood and others from Colorado and the legal contest ensuing therefrom suggest several questions in constitutional law and in interstate rendition, which are treated by Mr. C. P. McCarthy in a recent article. *A Constitutional Question Suggested by the Trial of William D. Haywood*, 19 Green Bag 636 (November, 1907). Haywood and the others, who were in Colorado, were charged in Idaho with being accessories before the fact while in Colorado to a murder committed in Idaho. Through connivance between the officials of the two states, they were kidnapped in Colorado by Idaho officials and carried into Idaho. They instituted *habeas corpus* proceedings to secure their release, but the United States Supreme Court decided against them.[1] Mr. McCarthy's initial assumption that this result is correct and established law is indisputable.[2] An offender against one state has no right of asylum in another. He is untouched there solely because the machinery of the offended state cannot reach him. Accordingly, when that difficulty is removed by his actual presence within the jurisdiction, there is no reason for not holding him. But the query is whether or not it is necessary to resort to this procedure which has so little to commend it to an orderly community. The author points out that in this situation there is no other way under our present laws whereby the outraged sovereignty can secure the offender to inflict punishment. The federal Constitution provides that any person who shall flee from justice shall be delivered up on demand of the state from which he fled. It is now entirely settled that for the demand to come within this provision, the party demanded must have been within the demanding state at the time the crime was committed.[3] This was not the situation in the Haywood case, nor would it be in the many instances in which a party can commit a crime against a state without being physically within its territory. Mr. McCarthy then considers whether there is any way of meeting these situations.

A constitutional amendment would, of course, afford a remedy, but that is not now feasible. Until such amendment, congressional legislation covering the situation would be unconstitutional, as there is no warrant for federal action except in the case of fleeing criminals.[4] State action remains as the only pos-

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[1] Pettibone *v.* Nichols, 203 U. S. 192.

[2] He cites the leading cases in accord. There are only two *contra*. State *v.* Simmons, 39 Kan. 262; *In re* Robinson, 29 Neb. 135.

[3] Hyatt *v.* Corkran, 188 U. S. 691.

[4] It has been contended that in enacting the present statute Congress has exceeded its powers. Matter of Romaine, 23 Cal. 585. *Contra*, *Ex parte* Morgan, 20 Fed. 298, 303.

sible source of relief. It is not contended that the executive can without statutory authority remove persons from the state.[5] But Mr. McCarthy believes that the states may legislate to produce this result. This opinion seems correct. It is disputed on the ground that, because interstate rendition depends upon the federal Constitution, no person can be surrendered unless the case falls within the constitutional provision.[6] This is fallacious. To imprison or to remove from its territory such persons as it sees fit is unquestionably an inherent power of every sovereignty. Before the Constitution, or in the absence of any provision on the subject, each state in the exercise of its sovereignty could surrender criminals or refuse to do so at its discretion. It does not follow, then, that because the Constitution requires it to surrender them in some cases, it has lost its discretion in the remaining cases. Otherwise no effect would be given to the Tenth Amendment, which reserves to the states all power in local affairs not granted. Again, it is argued that the view contended for would be destructive of national homogeneity, as making possible agreements between some states to the exclusion of others.[7] That argument would apply equally to any legislation conferring favors on outsiders. For example, some states have lent to outsiders their machinery to secure testimony from persons within their boundaries;[8] but that practice has never been decried, nor has our national homogeneity disappeared. In short, statutes of this nature need not have the suggested effect — it is only possible that they may be so drawn as to have such effect. At least half of the dicta[9] and the only decision[10] found at all in point are with the view advocated. It is also supported by several analogies. Thus the Constitution does not require the states to hold fugitives from justice before demand is made, but still the states may do so.[11] And the states may provide the method of the arrest[12] — a fact which again shows that the states are not excluded from legislating on this subject.

RIGHTS ARISING FROM MISTAKE OF LAW. — It is well settled in both England and the United States that money paid under a mistake of fact can in general be recovered.[1] It is generally stated in the text-books that in neither country can there be a recovery of money paid under a mistake of law.[2] In a recent article Mr. Corry Montague Stadden maintains that there is in England at the present day, as well as in France and Germany, no difference between the two classes of cases. *Error of Law*, 7 Colum. L. Rev. 476 (November, 1907). Clearly until 1802, as Mr. Stadden points out, no distinction was made either in law or in equity. Lord Mansfield in 1786 said that the rule had always been that "if a man has actually paid down what the law would not have compelled him to pay, but what in equity and conscience he ought, he cannot recover it again; but where money is paid under a mistake, which there was no ground to claim in conscience, the party may recover it back again."[3] But in 1802 in a case where the question was whether money paid under a mistake of law could be recovered, Lord Ellenborough, misled by counsel to think there was no authority for allowing a recovery in such a case, refused relief.[4] Though, as

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[5] *Ex parte* Morgan, *supra*, 301.
[6] People *v.* Hyatt, 172 N. Y. 176, 182.
[7] *In re* Kopel, 148 Fed. 505, 506.
[8] For example, N. Y. Code Civ. Proc., §§ 914–919.
[9] See State *v.* Hall, 115 N. C. 811, 818; Matter of Fetter, 23 N. J. L. 311, 315.
[10] Matter of Romaine, *supra*.
[11] Commonwealth *v.* Tracy, 5 Met. (Mass.) 536. See also Knowlton's Case, 5 Cr. L. Mag. 250, 254.
[12] *Ex parte* Ammons, 34 Oh. St. 518.

[1] See 14 HARV L. REV. 467.
[2] 9 Cyc. 403; Keener, Quasi-Contracts, 86.
[3] Bize *v.* Dickason, 1 T. R. 285.
[4] Bilbie *v.* Lumley, 2 East 469.